No. 251.

Petition for Rehearing.

Rec'd & Dist'd May 22, 1900

Supreme Court of the United States

OCTOBER TERM, 1899.

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GEORGETTE A. CHAMBERLIN ET AL., Appellants,

vs.

HORATIO BROWNING ET AL., Appellees.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

Petition of Appellants for Rehearing.

O. B. HALLAM,
Attorney for Appellants.

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Convinced of the inherent justice of the appellants' cause on its merits, and convinced also from a reading of the opinion of the court filed in this cause that the court overlooked what we consider a controlling previous opinion on the question of jurisdiction, and that the cases cited by it in support of its opinion, while unquestioned and unquestionable as authority, are not applicable, or at least not controlling, as to the particular question of jurisdiction involved in the present appeal, counsel for appellants respectfully asks a rehearing of the cause, with a view that jurisdiction of the appeal may be upheld and the case heard and determined on its merits.

AS TO GIBSON VS. SHUFELDT, 122 U. S., 27.

This is the principal case cited by the court. There a number of creditors were joined in a suit to set aside a trust conveyance as fraudulent—the creditors not claim-

ing a joint interest under the deed, but severally, adverse to it. The court dismissed the appeal as to all, except one, who had a claim of more than $5,000, but upheld it as to that one, and in so doing used these expressions among others in the course of its opinion.

"In equity when the sum sued for is one in which the plaintiffs have a joint and common interest the whole sum sued for is the test of the jurisdiction (p. 33)."

"In equity when several persons join in one suit to assert *several and distinct* interests and those interests alone are in dispute the amount of each is the limit of the appellate jurisdiction (p. 34)."

Hence it was held in that case that the claims were several and distinct, and that the appeal must be dismissed as to all except one creditor who had a claim of over $5,000—jurisdiction of that claim was taken and the decree below reversed as to the dismissal thereof.

It is immaterial from that standpoint on the present appeal, for purposes of jurisdiction in part at least, to discuss whether the interest of the appellants is joint or several, for one of the claims, that of Mrs. Chamberlin, is $25,000 (Record, p. 5).

But we insist that not only her claim but those of all the other appellants must be considered, because they all claim by virtue of the deed of assignment for their joint benefit, and pray (Record, p. 7) that the assets sought to be recovered be distributed among all of *Scott's* creditors.

This court in its opinion says "If appellees could not, if recovery had been had against them, unite their separate interests for the purpose of an appeal, the appellants cannot do so for the purpose of asserting appellate jurisdiction in this court." This proposition thus laid down by the court, if not a *non sequitur* generally, is so in this particular case, and is in conflict with the view announced by this court in the following case.

AS TO ESTES VS. GUNTER, 121 U. S., 185.

This case seems nearly on all fours with the present one and was relied on by counsel in taking this appeal.

If not overlooked, it certainly is not referred to by the court in its opinion, and I call anew attention to it, insisting that the doctrine of *stare decisis* should be adhered to in matters of practice at least.

There a preferred creditor for $10,000 under a deed of trust sought to defeat certain attachments of Beckham & Moore for less than $5,000, and the court refused to dismiss the appeal, took jurisdiction and reversed the decree dismissing the appellants' bill (S. C. 122, U. S., 450) for the following reasons stated in the opinion.

"The suit was brought not only to defeat the attachment, but to establish the assignment and make it available. The effect of what has been done is to defeat the claim which Estes and Doan have set up in their bill, and so far as now appears it matters not to them what disposition is made of the assigned property."

The case at bar is practically identical. Creditors to the amount of $35,000 suing for themselves as well as other creditors $50,000 more in value ask to have the assignment "established and made available" as to the Maryland land of $15,000 value.

It is respectfully submitted that this court is in error when it says in its opinion: "Recovery of land or its value was not the relief sought by the bill below." The bill after reciting the nature of the title to the land alleges (par. 12 p. 5 of record), "all title which said Scott had in said land passed by the deed of assignment" and the 5th, 6th and 7th prayers of the bill (Record p. 7) pray distinctly that it, or its proceeds if sold, be turned over to a new trustee, or to the court. This is especially emphasized by the fifth prayer—asking that defendant Scott be required, if need be, to execute a new deed to

the new trustee, more specifically conveying the fee simple which it is asserted was constructively conveyed by operation of the statute.

It would appear, therefore, immaterial to consider whether the claims of the attaching creditors in the aggregate amount to more than $5,000, and it is not on that idea at all that jurisdiction is contended for, except incidentally (Record p. 6) it is alleged that the attaching creditors were proceeding jointly. In Estes *v.* Gunter, it is distinctly held that where the *property* which is sought to be established as conveyed by the trust is of more value than $5,000 it is immaterial that an attachment is for less for $5,000. The only diffierence, wholly immaterial, is that there one creditor wanted the fund and here several having a common interest ask it.

The other two cases cited in the court's opinion are even much less in point. *Friend v. Wise*, 111 U. S., 797, is one where the court held that the value of two sections of land claimed jointly and of the joint value of $5,000 gave the court jurisdiction. Henderson *v.* Wadsworth, 115 U. S., 276 is one where *several* judgments were rendered against different parties and the appeal was dismissed as to all except one for over $5,000, as to which it was reversed.

The ruling in Estes *v.* Gunter, seems to me to fit exactly the present case in view of the allegations contained in the bill As it is omitted from the court's reasoning, I respectfully ask its rereading and comparison with the facts here alleged, confident that the court when doing so will hold that jurisdiction of this appeal attaches.

O. B. HALLAM,
Attorney for Appellants.

I hereby certify that in my judgment the foregoing petition for rehearing is well founded in law.

O. B. HALLAM,
Attorney for Appellants.